



**BRIEFING: AUGUST 2013 BOARD MEETING AGENDA ITEM #5**

**TO:** Chairman Richard and Board Members

**FROM:** Karen Greene-Ross, Assistant Chief Counsel

**DATE:** August 1, 2013

**RE:** Proposal to Amend the Nossaman LLP Contract for Legal Services

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**Summary**

The Nossaman Law Firm's current contract amount of \$5,900,000 is anticipated to be depleted in August, 2013. This contract is for legal work that cannot be performed by the Attorney General's office. The services of the Nossaman Law Firm are needed and must be extended through Fiscal Year (FY) 2014-15 to assure consistency and retain institutional knowledge throughout the next 2 years. Continuation of these services is critical to the completion of the procurement process for all 5 construction package contracts on the Initial Operating Section, assistance with Environmental Permitting process with State and Federal Agencies, state bond act compliance, FRA funding and credit assistance, Federal Surface Transportation Board jurisdiction assistance, FRA regulatory requirements, negotiations with freight rail roads, and negotiations with Amtrak for rolling stock procurement.

The continuation of these services is critical to ensuring future Proposition 1A and federal funding for the Initial Operating Section, compliance with federal and state legal requirements, and completion of all 5 procurements documents for the design-build construction contracts.

Board action will be needed to amend the Nossaman contract before existing funds are expended to enable the work to proceed uninterrupted. It should be noted that legal contracts are not required under state law or Board policy to be competitively bid and that the Authority only uses outside legal services after confirming with the Attorney General's Office (AG) that the AG cannot provide those specific services. Finally, this contract is not a retainer, but rather is based on specific tasks to be performed by Nossaman.

**Background**

The following narrative describes the scope of the work to be performed by Nossaman:

- Assure all necessary state and Environmental Permits are obtained
- Provide legal support in securing Proposition 1A and Federal grant funding requirements
- Prepare and prosecution of application or declaratory order petitions for federal Surface Transportation Board jurisdiction.

- Assist with the evaluation of freight railroad business and legal positions on shared or adjacent facilities.
- Assist with application for and compliance with FRA regulatory requirements.
- Provide legal assistance in the procurement process for all five design build construction packages for the Central Valley including request for qualifications, request for proposals, contract drafting and the like.
- Provide legal training and guidance on high speed rail design build procurement processes, to transition in new CHSRA civil service attorneys.

### **Recommendation**

Staff recommends the Board authorize the Chief Executive Officer (CEO) to negotiate a contract amendment with Nossaman through FY2014-15 in the amount of \$8.6 million (bringing the total contract amount to \$14.5 million).

This amount will also include subcontracts with certified small businesses consistent with the Authority's Small Business Goal.

### **Attachments**

- Resolution #HSRA 13-18